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No. 80-1894

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1980

MICHAEL BEN-LEVI,

Appellant,

v.

SHARON E. BEN-LEVI,

Appellee.

On Appeal from the Superior Court of the State of New Jersey, Appellate Division

MOTION TO DISMISS

SHARON E. BEN-LEVI
Appellee, pro se
131 Mountain Avenue
P.O. Box 2313
Princeton, New Jersey 08540
(609) 924-6778

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131 Mountain Avenue
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September 30, 1981

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 1980

NO. 80-1894

MICHAEL BEN-LEVI,

Appellant,

v.

SHARON E. BEN-LEVI,

Appellee.

MOTION TO DISMISS

I have been directed by this Court to respond to Mr. Ben-Levi's jurisdictional statement. This response complies with that direction and is submitted only out of respect for this Court.

I move that this case be denied a hearing by the United States Supreme Court on the grounds that it does not contain any clear federal issue and that the judgment of the Appellate Division of the New Jersey Superior Court rests on independent and adequate state grounds. Please consider the following:

1. The Superior Court of New Jersey assumed jurisdiction over the children in June 1979. They had been residing in New Jersey for nearly one year and this fact has never been contested. The Superior Court of New Jersey found that I "had not deliberately left California to evade the jurisdiction of the [California] Court".

2. New Jersey law traditionally requires jurisdiction over the children, not the parents, to make orders in the childrens' best interest. Children are not property of the parents, but have their own rights to be protected.

3. The Appellate Court of New Jersey upheld the action of the Trial Court stating about Mr. Ben-Levi's appeal that:

> "Our review of the entire record in this matter satisfies us that all of the issues of law raised on this appeal are clearly without merit."

4. The Appellate Division of New Jersey refused to rehear the case.

5. Twice the Supreme Court of New Jersey refused to hear the case.

6. No part of the decision of any of the Courts of New Jersey rested upon any federal statute and no part constituted the enforcement of any provision of the United States Constitution.

Throughout the masses of material Mr. Ben-Levi has generated, he maintains that New Jersey must have jurisdiction by personal service in New Jersey over him not the children, in order to modify a custody order. As Mr. Ben-Levi said in his brief for Certification to the New Jersey Supreme Court:

> "To set the record straight, this appeal does not challenge the parens patriae jurisdiction of New Jersey courts, as parens patriae jurisdiction is operationally and legally defined by N.J.S.A. 2A 34-31b and 2A:34-31(3), and N.J.S.A. 9:2-9...This appeal is limited in its scope. It merely challenges the adequacy of in rem jurisdiction at modification of

custody proceedings when child abuse or neglect has not been alleged."

The children are not a rem or a property right. Their best interests are at stake and any lesser standard is child abuse or neglect. The Appellate Division of New Jersey clearly found that "jurisdiction founded on the physical presence of the children within the State under circumstances evident here is sufficient to permit a New Jersey court to intervene".

Mr. Ben-Levi tries to create as a ground for your hearing this case a "conflict" between New Jersey and California. None exists. The California Court, obviously in an attempt to mollify Mr. Ben-Levi, entered an empty order reconfirming its 1978 order. Since the children and I were living in New Jersey and had already had a full hearing before the New Jersey Court, we did not participate in or challenge the action of the California court. To equate the two orders so as to claim an unconstitutional and impermissible "conflict" between the two States is a logical and legal absurdity and an imposition on this Court.

Mr. Ben-Levi is unemployed and devotes a great deal of time to this case. He came to New Jersey twice to appear before the court to argue his concepts of jurisdiction, but not to see his children. Neither I nor the New Jersey courts has ever denied him visitation or contact with the children; in fact in 1978 he visited them extensively in New Jersey. It is his obsession with his jurisdictional issue which causes him voluntarily to suspend contact with the children.

On the other hand, I work to support the children; I receive no child support and have not since 1977; nor has any been ordered by New Jersey. While I am reluctant to act pro

se, I am also finding it difficult and wasteful to continue paying attorneys to debate with Mr. Ben-Levi. He continues to use and abuse the legal system to get to me.

I respectfully request that this Court dismiss Mr. Ben-Levi's notice of appeal since it does not involve a substantial federal question.

Respectfully submitted,

Sharon E. Ben-Levi

SHARON E. BEN-LEVI
Appellee, pro se
131 Mountain Avenue
P.O. Box 2313
Princeton, New Jersey
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(609) 924-6778

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that three true and correct copies of the foregoing Motion to Dismiss was mailed to MICHAEL BEN-LEVI, Appellant, pro se, 327 North Curson Avenue, Los Angeles, California 90036 this first day of October, 1981.

Sharon E. Ben-Levi

SHARON E. BEN-LEVI
Appellee, pro se